

Minutes of the November 4, 2004 meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Hon. James O. Donnelly; Hon. Andrew Ketterer; Hon. Jean Ginn Marvin; Hon. A. Mavourneen Thompson; Hon. Terrence J. MacTaggart.

At 9:00 a.m., Chair Donnelly convened the meeting. The Commission considered the following items:

Agenda Item #1 – Request for Cash Transfer to Maine Clean Election Fund

At the invitation of the Chair, the Commission director discussed the sufficiency of the Maine Clean Election Fund to make payments to candidates in the 2006 elections. Because of past transfers from the Fund totaling \$6,725,000 and the gubernatorial elections in 2006, the Commission staff determined that there would not be enough cash in the Fund for the next election cycle. The Commission director recommended relying on statutory provisions in current law permitting the Commission to request two advance transfers to the Fund totaling \$4,000,000 in 2006.

Chair Donnelly asked if the provision in the Election Law regarding the percentage of an election vote required to qualify as a party would have any bearing on how much would be paid to candidates in the 2006 elections. Ms. Gardiner said that would not affect the amount paid in 2006. The Chair recommended that the Commission request funds from the Governor's administration, and that the Commission should also introduce its own bill. Mr. Ketterer noted that in 2003 the Commission had put in a request and the Legislature honored the request by advancing funds.

Doug Clopp of the Maine Citizen Leadership Fund stated that there had been a verbal agreement that cash transferred from the Maine Clean Election Fund to the Rainy Day Fund would be returned if there was a need, but that the people responsible for the verbal agreement were no longer in leadership positions. The director said it might improve the chances of receiving the \$4,000,000 if the Commission was willing to take part of the money in 2005 and wait for the remainder until 2006.

Chair Donnelly suggested that the Commission should ask for the entire amount as a cash transfer, rather than as an advance on amounts to be transferred in 2007 and 2008. He also stated that if the people of Maine want the Maine Clean Election Act, then they should be willing to provide the funds. The director responded that he would make the request from the executive branch and prepare a bill.

Agenda Item #2 – Post-Election Survey of Legislative Candidates

The director asked for feedback from the Commission on questions in a proposed survey of legislative candidates. The Chair asked about the basis of some of the questions. Ms. Thompson suggested that the questions be more open-ended.

Agenda Item #3 – Proposed Schedule for Rule-Making and Recommendations for Statutory Changes

The Commission director proposed a number of dates for a formal rule-making, and asked for general recommendations for statutory changes. He noted that he had kept a running list of ideas for rule and statute changes throughout 2004. The Commission members recommended having some suggestions for a bill ready by the December meeting. The director said he had received several calls relating to leadership PACs. He stated that in January 2003, the Commission had decided that, as a legal matter, Maine Clean Election Act candidates were allowed to collect money for PACs not used for their re-election – even though it appeared inconsistent with the spirit of the Act. Ms. Ginn Marvin asked if the Commission staff could put together some background information on leadership PACs. The director said he would have that for the December meeting.

Agenda Item #4 – Possible Enforcement Items for Future Meeting

The director requested some guidance as to various potential enforcement issues that had arisen before the November 2 general election. The first was a request from the House Democratic Campaign Committee. It requested an investigation whether a Caribou bank was required to file an independent expenditure report because it had spent over \$100 per candidate distributing a voter guide produced by the Maine Economic Research Institute. The director said that, even though the election was over, he believed it was appropriate to determine whether the bank was late in filing a required report.

Mr. Clopp spoke to encourage the Commission to take the initiative on the request. He said he found it disturbing as an issue of employee relations that an employer would include a voter guide with the last paycheck before an election. Mr. Donnelly responded that the issue would be dealt with as a possible late filing.

The next item was a half-page ad in the Bangor Daily News paid for by the We the People PAC, which was organized by Senate candidate John Linnehan. The director said that the advertisement raised the question of whether the PAC had contributed more than \$250 to Mr. Linnehan's campaign, because of Mr. Linnehan's possible cooperation with the ad. It also raised the question of whether the PAC had made a contribution to the campaigns of the other 31 candidates listed or pictured in the ad if they had cooperated in the advertisement by supplying pictures or other information. The Commission members asked the director to request information from Mr. Linnehan and to determine whether there had been a violation.

The director described two situations of possible late filings of independent expenditures by the SCICOM PAC and the Maine State Democratic Party. The director explained that in both cases candidates or consultants had complained that the reports were filed late relative to when the literature was received by voters. These candidates felt that they should have received matching funds before the ad was received the voters. Mr. Ketterer explained that the law is that the report must include the date when the obligation was incurred and not when the goods were paid for or mailed. The Commission director commented that it is possible that other reports filed within the last week before the election were not reported within 24 hours of when the PAC or party committee made an obligation or agreement, and inquired whether he should look into these cases as well. The Commission members responded that the Commission staff should review only those cases which had been the subject of complaints or requests.

There being no further business, the meeting adjourned.

Dated: May , 2005

Respectfully submitted,

Jonathan Wayne
Executive Director